

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-6145-2015 (O&M)

Date of decision: 6.10.2015

Smt.Shakuntla Devi and another

...Petitioners

Versus

Dharambir and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Abhimanyu Singh, Advocate for the petitioners

SNEH PRASHAR, J.

The present revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 16.7.2015 passed by learned Civil Judge, Junior Division, Gurgaon vide which, application filed by the respondents-plaintiffs for leading secondary evidence was allowed.

Plaintiffs-respondents filed a suit for possession by way of specific performance with consequential relief of permanent injunction on the ground that vide agreement to sell dated 11.5.2007, the defendant/petitioner No.1 herself as well as on behalf of her minor son defendant /petitioner No.2 had agreed to sell the suit property situated in the revenue estate of Village Khandsa, Tehsil and District Gurgaon in favour of the respondents-

plaintiffs for a sale consideration of Rs.8,000/- per square yards and had received a sum of Rs.4,60,000/- as earnest money. During the course of trial an application was filed by the respondents for leading secondary evidence in respect of the agreement to sell dated 11.5.2007 to prove the same, which was allowed by learned trial Court.

The submissions made by learned counsel for the petitioners have been heard.

It is submitted on behalf of the petitioners that no such agreement to sell was ever executed between them and the respondents and it was also not in their possession/ custody. Had there been any agreement of sale, it should have been in possession of the respondents and they should have been in a position to produce primary evidence to prove the same. Submitting that the suit had been filed only to harass the petitioners, learned counsel relied upon **Hira and another vs. Smt.Gurbachan Kaur 1988 (2) PLR 173 and Surinder Kumar vs. Murari Lal 1993(2) RRR 535.**

It is not a case of loss or destruction of the document. Perusal of the impugned order dated 16.7.2015 of learned trial Court shows that the original agreement to sell is alleged to be in possession of petitioner No.1, who is stated to have taken the same to obtain permission of the Court to sell the share of the minor. The respondents alleged to be having only a photostat copy of the document. The

petitioners denied having entered into any such agreement of sale therefore, production of the document by them was not possible.

Sub clause (a) of Section 65 of the Indian Evidence Act, 1872 postulates that secondary evidence may be given of the existence, condition, or contents of a document when the original is shown or appears to be in possession or power of a person against whom the document is sought to be proved or any other person out of reach or not subject to the process of the Court or of any person legally bound to produce it and when after the notice mentioned in Section 66 such person does not produce it.

The plaintiffs-respondents stated that the original agreement to sell is in the custody of defendant/ petitioner No.1. The case is at the stage of plaintiffs' evidence. Learned trial Court allowed the application on the ground that the loss or existence of agreement to sell dated 11.5.2007 cannot be pre-determined without giving an opportunity to the parties to prove the same. The petitioners will have ample opportunity to rebut the evidence led by the respondents.

In the above premises, there being no illegality or perversity warranting intervention in the order passed by learned trial allowing the application for leading secondary evidence, the present revision petition being devoid of merit is dismissed.

6.10.2015
gsv

(SNEH PRASHAR)
JUDGE